

**BEFORE THE COMMISSION
ON COMMON OWNERSHIP COMMUNITIES
MONTGOMERY COUNTY, MARYLAND**

BRIAN FLICKINGER)	
)	
Complainant)	
)	
vs.)	Case No. 598-0
)	
PARKER FARMS CONDOMINIUM)	
OWNERS ASSOCIATION)	
)	
Respondent)	
)	

DECISION AND ORDER

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(I), 10B9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission having considered the testimony and other evidence of record, it is therefore this 9th day of June 2003, found, determined and ordered as follows:

BACKGROUND

Brian Flickinger owns a condominium in the Parker Farms Condominium and therefore, is a member of the Parker Farms Condominium Owners Association (Parker Farms or The Association). The Association is a condominium association that administers the condominium through a Board of Directors whose responsibilities include establishing and enforcing house rules, collection of assessments, hiring management and maintaining common elements.

On September 10, 2002, Mr. Flickinger filed a complaint with the Montgomery County Commission on Common Ownership Communities alleging numerous violations of the law and the Association's governing documents. Mr. Flickinger's allegations are:

- Fraudulent election(s)
- Failure to properly supervise elections
- Improper number of board members
- False assumption of role
- Failure to provide notice of meetings

- Refusal to provide access to the Association's records
- Refusal to provide a hearing
- Creation of a false billing scheme
- Mail Fraud
- Misuse of the Association's funds
- Misuse in the application of the Association's funds

On February 20, 2003, the Commission accepted jurisdiction of the case. However, the Commission determined that issues regarding the false billing scheme and mail fraud are not within its jurisdiction.

FINDINGS OF FACT

1. Brian Flickinger owns a condominium unit located at 2330 Red Bugle Ct., Aspen Hill, MD 20906. This unit is part of the Parker Farms Condominium.
2. Parker Farms Condominium Owners Association is a condominium association responsible administering the Parker Farms Condominium through a Board of Directors. These responsibilities include, but are not limited to, establishing and enforcing house rules, collection of assessments, hiring management and maintaining common elements.

DISCUSSION

As demonstrated by the length of time it has taken to issue this decision, I have found drafting this decision most difficult. As panel chair, I view the role of the hearing panel as primarily adjudicatory, but strongly believe that there is an educational component that should provide guidance to the many volunteers that contribute their valuable time for the betterment of the communities in which they live. They do this frequently without thanks and often face the criticism and ire of their neighbors who disagree with their decisions. The decisions of the panel should not only reach a legally supportable conclusion but also instruct communities and homeowners as how to best live within the structure of the Homeowners/Condominium Association.

I have written numerous versions of this decision, I have attempted to incorporate, without success, some of the concepts mentioned in the previous paragraph. I have looked for quotes from legal precedent and attempted to include tempered words and concepts in discussing

the panel's conclusion. I have found each of these versions to be insufficient to express the views of the panel on this case.

As noted above drafting this decision was very difficult. Reaching the conclusion was easy, crafting the appropriate words was the difficult part. The conclusion is that Mr. Flickinger's complaint against the Parker Farm Condominium Association is dismissed, with prejudice.

The record in this case is replete with evidence that Mr. Flickinger has been a thorn in the side of Parker Farms and its management agent, The Management Group Associates (TMGA). That, in and of itself, is not necessarily a bad thing. Frequently, overzealous board members can overstep their bounds, violating the community's governing documents and state and county laws, in an effort to ensure smooth operation of the community or to adhere to a strict interpretation of the community's covenants and rules. For the most part, Mr. Flickinger's complaints are similar in nature to those that might be filed by an individual challenging a board that has gone too far.

Testimony at the hearing mostly indicated a difference in perception regarding the facts of the case. The simple question then becomes whose testimony was more credible and when the credible testimony is examined, did Parker Farms (and its agent) conduct its business within the law and in a reasonable manner. Mr. Flickinger offered no evidence that the Parker Farms Board of Directors or its agent, TMGA, failed to comply with the Association's governing documents or the provisions of the Maryland or Montgomery County laws regarding Condominiums.

The conclusion of the panel was that Mr. Flickinger was not credible and his perception of events, including expectations of what should have taken place, was not reasonable. While TMGA probably was not as cooperative as it could have been, it is understandable that its employees were hesitant to deal with Mr. Flickinger. He can be pushy to the point of being abrasive, and his actions go beyond what a reasonable person might find acceptable. As example:

Mr. Flickinger prevented TMGA from sending any mail to his address and then complained that there were problems with his account and that he did not receive notice of meetings. The way he prevented TMGA from sending mail to him was filing a complaint with the United States Postal Service alleging that TMGA sent him pornographic materials through the mail. The item Mr. Flickinger claimed

was pornographic was the community's application for the annual pool pass. He testified that he found the women at the pool in swimsuits to be pornographic.

Another example of his unreasonable conduct centers on one of the community's annual meetings. Mr. Flickinger, knowing other community members were outside the building where the meeting was scheduled to take place, stood alone in the empty meeting room and out loud called the meeting to order.

One of Mr. Flickinger's main complaints centers on access to the records of the association. He has the right to access these records. However, he must understand that this right has limits. He must make an appointment to view the records at a time that is convenient not only for him but also for TMGA. The management company may not unreasonably limit when it is convenient for themselves to allow Mr. Flickinger to review the records.¹ Furthermore, the amount of time allotted by TMGA for each time Mr. Flickinger has access may be limited.² TMGA must provide the records as they are kept "in the ordinary course of business."³ TMGA need not answer any question regarding the documents, including questions regarding the meaning of a particular document. Mr. Flickinger does not have the right to go into TMGA's file room and search the files, he has the right to be put into a room and have the documents brought to him. He may be charged a reasonable fee if historic documents need to be brought from long-term storage. He may ask that copies of documents be made and TMGA may charge a reasonable cost per page. Mr. Flickinger does not have the right to access the computer and e-mail system.

Mr. Flickinger's remaining allegations were unsupported by any evidence. In fact, they are, for the most part, a result of his unreasonable approach to life in a condominium. The panel

¹ Neither Mr. Flickinger nor TMGA may give just one date and time that is convenient, that would not be reasonable. However, three or four possible dates over a two week time frame would usually be considered reasonable.

² It would be reasonable for TMGA to limit the blocks of time to three or four hours each, however, they could, of course allow greater access.

³ That does not mean that the records are pristine and in precise order. They need take no steps to organize the records in a way different from the way they are normally kept. Conversely, TMGA may not change the organization of the records to make it more difficult for Mr. Flickinger to review. Mr. Flickinger must realize that documents may be missing and/or misfiled.

felt some of his actions were done primarily in an effort to bully the association into adopting his view.

The only other claims that need to be discussed are the allegations that the board misused association funds. Their supposed misuse was the hiring of counsel for advice on the appropriate way to deal with Mr. Flickinger. For this the board should not be chastised but commended. Boards frequently face difficult situations in their efforts to manage their communities. They face neighbors who disagree with the consensus and they face neighbors who disapprove of the board's action but are unwilling to assist the board. In this case the Parker Farms Board found themselves facing an untenable situation for which they did not have the expertise to solve. Rather than stumble through and possibly make matters worse they sought the advice of counsel who guided them to a solution. That protected themselves and the association.

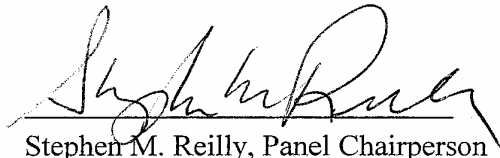
ORDER

In view of the foregoing, and based on the record, for the reasons set forth above, the Commission finds:

The complaint filed by Brian Flickinger is hereby dismissed, with prejudice. The panel will entertain a motion for costs and attorney's fees.

The foregoing was concurred in by panel members Leeds, and Reilly. Panel Member Roseman abstained.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

A handwritten signature in black ink, appearing to read "Stephen M. Reilly", is written over a horizontal line.

Stephen M. Reilly, Panel Chairperson
Commission on Common Ownership
Communities